

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
October 15, 2001 Session

**SUNNYCREST APARTMENTS, LTD., ET AL. v. WILLIAM J. GAINES, AS  
ASSESSOR OF PROPERTY OF UNICOI COUNTY, TENNESSEE, ET AL.**

Appeal from the Chancery Court for Washington County  
No. 7129     G. Richard Johnson, Chancellor

**FILED DECEMBER 19, 2001**

**No. E2001-00885-COA-R3-CV**

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In general terms, this litigation focuses on the efforts of two real property owners to challenge, through administrative channels, the results – as applied to their properties – of a county-wide reappraisal of property in Unicoi County. The owners initially contested the values assigned to their properties for 1997. While their appeal<sup>1</sup> for 1997 was pending, they filed another appeal, this time with respect to the 1998 tax year. After the values assigned by the tax assessor for 1997 were reduced on appeal, the property owners voluntarily dismissed their 1998 appeal and moved the State Board of Equalization (“the State Board”) to apply the lowered 1997 values to 1998 and subsequent tax years. The Board denied this request and the property owners sought review in the trial court. The defendants moved the court to dismiss the complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief could be granted. The trial court granted the motion and the property owners appealed. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court  
Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HOUSTON M. GODDARD, P.J., and HERSCHEL P. FRANKS, J., joined.

David E. Cypress, Nashville, Tennessee, for the appellants, Sunnycrest Apartments Ltd. and Douglas L. White d/b/a Erwin Village Shopping Center.

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Winston B. Sitton, Assistant Attorney General, for the appellees, William J. Gaines, as Assessor of Property of Unicoi County, Tennessee, Assessment Appeals Commission of the State of Tennessee, and Tennessee State Board of Equalization.

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<sup>1</sup>Each property owner appears to have filed a separate appeal. Apparently, there is no commonality of ownership between them. Because they had the same counsel in this case, who filed a joint petition for review in the trial court, and because the issues are the same in both cases, we will, for ease of reference, refer to their appeals in the singular.

## OPINION

### I.

During the 1997 tax year, Sunnycrest Apartments, owned by Sunnycrest Apartments, Ltd., and Erwin Village Shopping Center, owned by Douglas L. White, were reappraised pursuant to T.C.A. § 67-5-1601, *et seq.* The initial value proposed by the county property assessor for Sunnycrest Apartments was \$1,417,200, while the initial appraisal for Erwin Village Shopping Center was \$2,002,200. Sunnycrest Apartments, Ltd., and Douglas L. White (hereinafter collectively referred to as “the plaintiffs”) appealed their respective appraisals to the Unicoi County Board of Equalization (“County Board”) in 1997. Because the 1997 appeal was not heard by the County Board until 1998, the tax assessor conducted an annual assessment of both properties for 1998 pursuant to T.C.A. § 67-5-504 and assigned a value to the properties for that year. Being dissatisfied with the 1998 assessments, the plaintiffs also appealed those values to the County Board.

The County Board upheld the values determined by the property assessor for 1997. The plaintiffs appealed this decision to the State Board. An administrative law judge reduced the assigned values as follows: on Sunnycrest to \$1,079,300 and on Erwin Village to \$1,405,000. At this hearing, the plaintiffs requested that the administrative law judge replace the values determined for the 1998 tax year with the values assigned by him to 1997. The administrative law judge declined to do so.

The assessor of property for Unicoi County appealed the administrative law judge’s reductions to the Assessment Appeals Commission (“the Commission”), a level of the State Board. The Commission dismissed the assessor’s appeal and affirmed the judgment of the administrative law judge. At this hearing, the plaintiffs requested that the Commission consolidate its decision with respect to the 1997 tax year with their appeal as to 1998, and substitute the new 1997 values for 1998 and subsequent years until all properties were once again reappraised in 2002. However, the Commission refused to consolidate the appeals because the plaintiffs’ appeal for the 1998 tax year had not yet been heard by the State Board.

On June 22, 1999, the plaintiffs asked the Commission to reconsider its decision not to consolidate the appeals. At the same time, the plaintiffs voluntarily withdrew their appeal for tax year 1998, which appeal had not yet been reviewed by the State Board. On July 2, 1999, the State Board issued an initial decision and order dismissing the plaintiffs’ appeal with respect to 1998 based on the plaintiffs’ action in voluntarily withdrawing that appeal. The State Board then concluded that the plaintiffs no longer had any matters pending before it concerning tax year 1998, or any subsequent tax year, with which the 1997 decision could be consolidated. Nevertheless, the plaintiffs made one final attempt to persuade the State Board to review its decision not to consolidate the appeals. However, the State Board declined to exercise its discretion to review the decision and affirmed the decision not to consolidate the appeals. Thereafter, the plaintiffs filed a petition for review in the trial court. They requested that court to order the State Board to apply the 1997 values to 1998 and subsequent tax years, until the next reappraisal in 2002.

The Commission and the State Board, through the Office of the Attorney General (hereinafter collectively referred to as “the defendants”) moved to dismiss the plaintiffs’ petition on dual grounds – that the trial court lacked subject matter jurisdiction over the plaintiffs’ claims and that the petition failed to state a claim upon which relief could be granted, citing Tenn. R. Civ. P. 12.02 (1) and (6). The court below granted the defendants’ motion, holding that,

because the Plaintiffs withdrew, on June 22, 1999, their appeals before the State Board of Equalization for tax year 1998 relating to the assessed value of their properties, Sunnycrest Apartments and Erwin Village Shopping Center, the Plaintiffs have no matter pending before, or decided by, the State Board of Equalization concerning tax year 1998, or any subsequent tax year, which can be reviewed by this Court, and accordingly, the Plaintiffs fail to state a claim for which this Court may grant relief. In addition, this Court finds that, because the Plaintiffs have failed to appeal the valuation assessments for the 1998 tax year and subsequent tax years before the County Board of Equalization and the State Board of Equalization, the Plaintiffs have not exhausted their administrative remedies in this case as required by the Uniform Administrative Procedures Act and this Court lacks jurisdiction over the subject matter of the complaint.

Plaintiffs appeal, arguing that the trial court erred in dismissing their petition for review. They contend that the trial court’s dismissal should be set aside and the case remanded for a hearing on the merits.

## II.

Our standard of review with respect to findings of fact by the trial court is *de novo* upon the record, accompanied by a presumption of correctness as to the trial court’s factual findings, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); ***Union Carbide Corp. v. Huddleston***, 854 S.W.2d 87, 91 (Tenn. 1993). Review of questions of law is *de novo*, with no such presumption of correctness. ***Campbell v. Florida Steel Corp.***, 919 S.W.2d 26, 35 (Tenn. 1996); ***Richardson v. Tennessee Assessment Appeals Comm’n***, 828 S.W.2d 403, 407 (Tenn. Ct. App. 1991).

### III.

The trial court dismissed the plaintiffs' petition because it determined that it lacked subject matter jurisdiction of the petition. The concept of subject matter jurisdiction relates to a court's authority to hear and decide a case brought before it. *Meighan v. U.S. Sprint Communications Co.*, 924 S.W.2d 632, 639 (Tenn. 1996); *Cashion v. Robertson*, 955 S.W.2d 60, 63 (Tenn. Ct. App. 1997). A court derives its subject matter jurisdiction from the state constitution and statutes. *Kane v. Kane*, 547 S.W.2d 559, 560 (Tenn. 1977). A court cannot exercise jurisdiction that has not been conferred upon it. *Dishmon v. Shelby State Community College*, 15 S.W.3d 477, 480 (Tenn. Ct. App. 1999) *perm. app. denied* April 10, 2000.

The plaintiffs contend that the trial court erred in dismissing their petition for review, which dismissal was based on the plaintiffs' withdrawal of their appeal of the 1998 tax assessments. They argue that the trial court incorrectly held that the 1998 appeal was not a part of the 1997 appeal. They dispute the trial court's finding that they failed to exhaust their administrative remedies, thereby depriving the trial court of subject matter jurisdiction to review their petition. Instead, the plaintiffs argue that the basis of their appeal is that the 1997 appraisals should be carried forward to each year thereafter until the next reappraisal, without forcing the plaintiffs to maintain a separate appeal for each tax year. The plaintiffs argue that forcing them to relitigate the tax valuation for 1998 and each subsequent year, without a legitimate change to the subject properties, places them on a unequal footing with all other taxpayers in Unicoi County whose property was reappraised in 1997 and will remain at the same valuation until the next reappraisal in 2002, absent some fundamental change in the properties or mathematical error. In support of this argument, the plaintiffs assert that the State Board always carries forward an established appraisal to subsequent tax years until the next appraisal, absent a fundamental change in the property or mathematical error. However, as the trial judge noted, the plaintiffs have cited no authority for this alleged "longstanding practice" of the State Board.

The defendants contend that the trial court properly dismissed the plaintiffs' petition for lack of subject matter jurisdiction. The defendants assert that the refusal of the trial court to apply the 1997 values to subsequent tax years and relieve the plaintiffs of the necessity of maintaining a separate appeal for tax year 1998 is correct because the law requires annual assessments of real property in addition to periodic appraisals. The Tennessee statutes set forth a procedure whereby real property is *assessed* for taxes on an annual basis and *reappraised* on a periodic basis. According to T.C.A. § 67-5-502(a) (1998), "[t]he function of assessment shall be to assess...[a]ll property...to the person or persons owning or claiming to own the same on January 1 for the year for which the assessment is made...." Furthermore, T.C.A. § 67-5-504 (1998) provides that:

- (a) All assessments of real property...shall be made annually...as of January 1 for the year to which the assessment applies...
- (b) Not later than May 20 of each year, the assessment of all property in the county shall be made by the assessor of property....

In addition to annual assessments, the parties agree that Unicoi County has adopted a five-year appraisal cycle as authorized by T.C.A. § 67-5-1601(a)(1) (1998). We find that the trial court was correct in denying the plaintiffs' request to apply the 1997 values to subsequent tax years. Based upon the aforementioned statutes, real property is subject to annual assessments, and there is no authority for the plaintiffs' contention that real property is assigned a single tax value for each year between reappraisals.

The defendants also argue that, because the plaintiffs withdrew their appeal of the tax assessments for 1998 and have not filed an appeal of the assessments for any other tax year, the trial court lacked subject matter jurisdiction to review the plaintiffs' petition because there is no final decision by the State Board that is subject to review by the trial court. In support of this argument, the defendants rely upon the statutorily-mandated administrative procedures for raising a dispute regarding a tax assessment.

The legislature has set forth a series of administrative procedures for contesting tax assessments. The first step in the process is to appeal the assessment by the tax assessor to the County Board. *See* T.C.A. § 67-5-1407 (a)(1) (1998). If the taxpayer is dissatisfied with the decision of the County Board, it can appeal that decision to the State Board. *See* T.C.A. § 67-5-1412 (a)(1) (1998). Lastly, a final decision by the State Board is subject to judicial review "in the chancery court...where the disputed assessment was made or in the chancery court of Davidson, Washington, Knox, Hamilton, Madison or Shelby County, whichever county is closest in mileage to the situs of such property...." T.C.A. § 67-5-1511 (b) (1998).

In this case, the plaintiffs initially challenged the tax assessments of both properties for tax year 1997. However, before the plaintiffs' appeal regarding 1997 was heard by the State Board, the assessor rendered his annual assessment of the properties for the 1998 tax year. As a result, the plaintiffs appealed the 1998 tax assessment. However, the plaintiffs did not exhaust their administrative remedies with regard to the 1998 tax year. Instead of awaiting the decision of the State Board and then seeking review of that decision in the trial court, the plaintiffs voluntarily withdrew their appeal as to the 1998 tax year. Then the plaintiffs filed a petition for review in the trial court, asking the court to order the State Board to apply the 1997 values directly to the 1998 tax year and to subsequent tax years. T.C.A. § 67-5-1511 confers subject matter jurisdiction on a chancery court to review only final decisions of the State Board. Because the plaintiffs voluntarily withdrew their appeal of the 1998 tax year before the State Board was able to render a decision, there is no final judgment of the State Board with regard to tax year 1998 that is subject to judicial review by the trial court. *See* T.C.A. § 67-5-1511. Moreover, the plaintiffs have no action pending before, or decided by the State Board, concerning a subsequent tax year with which the 1997 decision could be consolidated.

We find that the plaintiffs were trying to bring their 1998 appeal directly to the trial court without first exhausting their administrative remedies with the State Board. The general rule is that "where an administrative remedy is provided by statute, relief must be sought by exhausting this remedy before the courts will act." *Reeves v. Olson*, 691 S.W.2d 527, 529 (Tenn. 1985) (quoting *Tennessee Enamel Mfg. Co. v. Hake*, 183 Tenn. 615, 620, 194 S.W.2d 468, 470 (1946)). Because

the State Board was denied an opportunity to make a decision regarding the 1998 tax assessments, the plaintiffs, by their own action, removed any grounds for review by the trial court. We find that the court below correctly concluded that it lacked subject matter jurisdiction over the plaintiffs' complaint.

The trial court also granted the defendants' motion to dismiss because it found that the plaintiffs failed to state a claim upon which relief could be granted. A motion to dismiss for failure to state a claim upon which relief can be granted examines the sufficiency of the complaint. **Smith v. First Union Nat. Bank of Tennessee**, 958 S.W.2d 113, 115 (Tenn. Ct. App. 1997). "The basis for the motion is that the allegations contained in the complaint, considered alone and taken as true, are insufficient to state a claim as a matter of law." *Id.* at 115. In resolving the issues on appeal, we are required to construe the complaint liberally in favor of the plaintiff and take the factual allegations of the complaint as true. **Cook v. Spinnaker's of Rivergate**, 878 S.W.2d 934, 938 (Tenn. 1994). The complaint should be dismissed for failure to state a claim if it appears that the plaintiff cannot prove any set of facts in support of his or her claim entitling him or her to relief. **Fuerst v. Methodist Hosp. South**, 566 S.W.2d 847, 848 (Tenn. 1978).

In this case, we find that the plaintiffs sought relief through means not provided by law, and thus, the petition states a claim for relief which cannot be granted. The plaintiffs requested that the trial court assume jurisdiction and direct the State Board to apply the 1997 values to tax year 1998 and subsequent tax years. However, as a result of the plaintiffs' voluntary dismissal of their 1998 appeal, the trial court could not assume jurisdiction because the plaintiffs were not appealing a final decision of the State Board. *See* T.C.A. § 67-5-1511. The plaintiffs were asking the trial court to do something that it had no authority to do. Therefore, we find that the trial court properly held that the plaintiffs failed to state a claim upon which relief could be granted.

#### IV.

The judgment of the trial court is affirmed. This case is remanded for collection of costs assessed in the trial court, pursuant to applicable law. Costs on appeal are assessed to the appellants, Sunnycrest Apartments, Ltd., and Douglas L. White.

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CHARLES D. SUSANO, JR., JUDGE